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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,971	12/29/2000	Michael R. Flannery	256/252	1769

30408 7590 10/27/2003

GATEWAY, INC.  
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EXAMINER
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TRAN, PABLO N

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 10/27/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/752,971

Applicant(s)

FLANNERY, MICHAEL R.

Examiner

Pablo N Tran

Art Unit

2685

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 9-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-8, drawn to a mobile telephone with a primary display and an auxiliary display, angle with respect to the primary display (see fig. 1-3).
  - II. Claims 9-16, drawn to a mobile telephone with a first section rotatable attached to a second section said first section being rotatable with respect to said second section such that said first section makes contact with said second section in a closed position (see fig. 4-5).
  - III. Claims 17-23, drawn to a mobile telephone with display having a first portion and a second portion being angled with respect to said first portion (see fig. 6).
2. The inventions are distinct, each from the other because:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group II has separate utility such as a mobile telephone with a first section rotatable attached to a second section said first section being rotatable with respect to said second section such that said first section makes contact with said second section in a closed position (see fig. 4-5). See MPEP § 806.05(d).

Art Unit: 2685

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention Group III has separate utility such as to a mobile telephone with display having a first portion and a second portion being angled with respect to said first portion (see fig. 6). See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter.
4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).
5. During a telephone conversation with Mr. Scott Richardson (no. 43436) on October 15, 2003, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-8. Claims 9-23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipate by *Jahagirdar et al.* (6,125,286).

As per claim 1, *Jahagirdar et al.* disclose a wireless phone capable of being carried by a user, comprising a primary display (fig. 1/no. 132); an auxiliary display (fig. 2/no. 130), angled with respect to the primary display; and the phone being capable of detachable attaching to the user so that, when the phone is in the attached position on the user, the auxiliary is viewable to the user (fig. 4).

As per claim 2, *Jahagirdar et al.* disclose the primary display of the phone is angled at least 45 degree with respect to the auxiliary display (fig. 1).

As per claim 3, *Jahagirdar et al.* disclose the limitation of claim 3 (fig. 2, col. 5/ln. 66-col. 6/ln. 13).

As per claim 4, *Jahagirdar et al.* disclose the limitation of claim 4 (fig. 2, col. 5/ln. 66-col. 6/ln. 13).

As per claim 5, *Jahagirdar et al.* disclose the limitation of claim 5 (fig. 2, col. 5/ln. 66-col. 6/ln. 13).

Art Unit: 2685

As per claim 6, *Jahagirdar et al.* disclose the limitation of claim 6 (col. 4/ln. 41-51).

As per claim 7, *Jahagirdar et al.* disclose the limitation of claim 7 (fig. 4).

As per claim 8, *Jahagirdar et al.* disclose the limitation of claim 8 (col. 5/ln. 38-65).

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jahagirdar et al. (6,304,763) and Toba (6,438,392) disclose radiotelephone communication system with multiple displays.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pablo Tran whose telephone number is (703)308-7941. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (703)305-4385.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**(703) 872-9314 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

**PABLO N. TRAN**  
**PRIMARY EXAMINER**

October 19, 2003



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